Ang Geck Choo v Wong Tiew Yong

HIGH COURT (MELAKA) — DIVORCE PETITION NO 33–29 OF 1997
SURIYADI J
31 JULY 1997

Family Law *— Divorce — Jurisdiction — Domicile — Respondent alleging that petitioner had abandoned Malaysia as her domicile — Whether intention and act of petitioner to abandon domicile could be proved and was unequivocal — Law Reform (Marriage and Divorce) Act 1976 s 48(1)(c)*

Evidence *— Proof of — Domicile — Change of domicile — Standard of proof sufficient to prove change or abandonment of domicile — Whether evidence adduced was enough to satisfy conscience of court*

The petitioner was lawfully married to the respondent on 4 June 1987 at the National Registration Department in Melaka and had stayed in Melaka until July 1996. The petitioner is a Singapore citizen and presently resided in Singapore which is her original place of domicile. The marriage had blessed the petitioner and the respondent with three children. The petitioner and the respondent went through turbulent times and had attempted to reconcile their differences three times before a marriage tribunal but without much success. The petitioner had also suffered physical and verbal abuse as early as 1991 and received medical treatment at the hospital. In July 1995, she left without her children for Singapore to seek employment to financially support all of them. During this period, she returned regularly to see her children. However, the respondent continued his assault on her. In June 1996, she was physically assaulted and this resulted in her having to be admitted to the psychiatric ward in the hospital. This incident was reported to the police. She left for Singapore in July 1996 with her two daughters and sought employment to support the children but she did not return to Malaysia to visit her son. Threats were still being directed to her via telephone calls which resulted in a police report being lodged on 24 September 1996. The petitioner filed a divorce petition on 18 March 1997. The respondent filed a preliminary objection where the issue raised was the legality of the divorce petition by virtue of the petitioner not being able to fulfil the requirement of the place of domicile as required by s 48(1)(c) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act').

Held, dismissing the preliminary objection:

(1) The pre-conditions of s 48(1)(c) of the Act on the domicile of the parties must be complied with before a court may grant a decree of divorce. As regards the place of domicile of the respondent, no problem was posed for the court as not only was he presumed to be domiciled here by virtue of his Malaysian citizenship, but also due to the fact that he was currently living in Malaysia. Where the petitioner was concerned, there was no presumption in favour of her despite her ten years' residence in Malaysia (see pp 471I and 472G–H); *WT Berge v Salamah bte Salim* [1979] 1 MLJ 18 followed.

(2) Where it is alleged that someone has adopted the domicile of choice, two essential elements involved in determining the domicile of choice are the factors of residence and the requisite intention to reside permanently for an indeterminate period in the country. Though the petitioner was in Singapore when the petition was presented, with the history of suffering behind her, no reasonable person would have blamed her as regards her wisdom of choice. There is no legal doctrine which presumes an abandonment of the place of domicile merely by the petitioner being at her domicile of origin (see pp 472H–I and 473A–D).

(3) It is accepted law that the concept of nationality and the issue of domicile are two totally different concepts which deserve different and separate treatments. A person may change his place of domicile but yet not be divested of his nationality. It would be fallacious to think that the terms 'domicile' and 'residence' as being synonymous (see p 473G); *Majumder v A-G of Sarawak* [1966] 1 MLJ 41 followed.

(4) A change of domicile is a serious matter and it must be decided animo et facto. Even if the petitioner had indicated that she desired to give up Malaysia as her place of domicile, it proved nothing as it merely disclosed the existence of animus without establishing the necessary factum. Proof of her change of domicile to her original domicile required strong evidence indicating her supposed desire to permanently move back to her country of birth (see pp 474E–H and 475E); *Boldrini v Boldrini and Martini* [1932] P 9 and *Copinger-Symes v Copinger-Symes & Anor* [1959] MLJ 196 followed.

(5) The onus of proving that a person has abandoned his domicile for another has always rested on the asserter. Both the intention and the act of abandoning must be demonstrated to be unequivocal and the conscience of the court must be satisfied by the evidence. In this case, the petitioner's return to Singapore was due to the abusive behaviour of the respondent; it was never pursuant to a free choice and could not be construed as unequivocal. Hence, the respondent had not succeeded in proving the petitioner's change of domicile (see pp 475C–D and 476B–C); *Re Lloyd Evans, Decd* [1947] 1 Ch 695 and *Re Estate of Fuld, Decd (No 3)* [1968] P 675 followed.

[Bahasa Malaysia summary

Pempetisyen telah secara sahnya berkahwin dengan penentang pada 4 Jun 1987 di Jabatan Pendaftaran Negara Melaka dan telah menetap di Melaka sehingga Julai 1996. Pempetisyen ialah seorang warganegara Singapura dan ketika ini menetap di Singapura yang merupakan tempat domisil asalnya. Perkahwinan antara penentang dan pempetisyen telah menghasilkan tiga orang anak. Pempetisyen dan penentang telah melalui masa-masa yang sukar dan telah berusaha untuk membaiki salah faham antara mereka sebanyak tiga kali dengan bantuan tribunal perkahwinan tetapi tidak berhasil. Pempetisyen juga telah menanggung deraan secara fizikal dan lisan seawal tahun

1991 dan telah menerima rawatan di hospital. Pada Julai 1995, beliau telah keluar tanpa disertai anak-anak untuk mencari pekerjaan di Singapura bagi menampung perbelanjaan mereka. Dalam tempoh itu, beliau selalu melawat anak-anaknya. Walau bagaimanapun, penentang masih lagi meneruskan serangan ke atasnya. Pada Jun 1996, beliau telah diserang secara fizikal dan ini telah mengakibatkannya dimasukkan ke wad sakit jiwa di hospital. Kejadian ini telah dilaporkan kepada polis. Beliau dan kedua-dua anak perempuan telah berlepas ke Singapura pada Julai 1996 dan mencari pekerjaan untuk menyara anak-anaknya tetapi beliau tidak kembali ke Malaysia untuk melawat anak lelakinya. Ugutan masih lagi ditujukan kepadanya melalui panggilan telefon yang mengakibatkan laporan polis terpaksa dibuat pada 24 September 1996. Pempetisyen telah memfailkan tuntutan perceraian pada 18 Mac 1997. Penentang telah memfailkan bantahan awal di mana isu yang ditimbulkan ialah kesahan petisyen perceraian memandangkan pempetisyen tidak berupaya memenuhi keperluan bagi tempat domisil seperti mana yang dikehendaki oleh s 48(1)(c) Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut').

Diputuskan, menolak bantahan awal:

(1) Pra-syarat s 48(1)(c) Akta tersebut tentang domisil pihak-pihak mestilah dipatuhi sebelum mahkamah boleh memberikan suatu dekri perceraian. Mengenai tempat domisil penentang, tiada masalah telah ditimbulkan bagi mahkamah kerana dia bukan sahaja dianggap berdomisil di sini memandangkan kerakyatan Malaysia, tetapi juga memandangkan kepada fakta bahawa dia kini tinggal di Malaysia. Berkenaan dengan pempetisyen, tidak terdapat anggapan yang memihak kepadanya walaupun beliau telah menetap selama di Malaysia (lihat ms 471I dan 472G–H); *WT Berge v Salamah bte Salim* [1979] 1 MLJ 18 diikut.

(2) Di mana ia dikatakan bahawa seseorang telah menggunakan domisil pilihan, dua unsur penting yang terlibat dalam menentukan domisil pilihan adalah faktor pemastautinan dan niat yang dikehendaki untuk menetap secara tetap bagi tempoh yang tidak terhad di negara itu. Walaupun pempetisyen berada di Singapura semasa petisyen ini dikemukakan, dengan sejarah kedukaan, tiada sesiapa pun yang waras fikirannya boleh menyalahkannya berhubung dengan kebijaksanaan pilihannya. Tiada doktrin undang-undang yang beranggapan suatu peninggalan tempat domisil hanya kerana pempetisyen hadir di domisil asalnya (lihat ms 472H–I dan 473A–D).

(3) Adalah menjadi undang-undang yang mantap bahawa konsep kerakyatan dan isu domisil adalah dua konsep yang berbeza yang memerlukan penilaian berasingan dan berbeza. Seseorang mungkin mengubah tempat domisilnya tetapi masih belum dilucutkan hak kerakyatannya. Adalah salah untuk menganggap terma 'domisil' dan 'kemastautinan' sebagai serupa (lihat ms 473G); *Majumder v A-G of Sarawak* [1966] 1 MLJ 41 diikut.

(4) Pertukaran domisil adalah suatu perkara yang serius dan mestilah diputuskan animo et facto. Sekalipun pempetisyen telah menyatakan bahawa beliau berhasrat meninggalkan Malaysia sebagai tempat domisilnya, ia tidak membuktikan apa-apa kerana ia hanya memperlihatkan kewujudan animus tanpa mewujudkan factum yang perlu. Bukti akan pertukaran domisilnya kepada domisil yang asal memerlukan bukti kukuh yang membayangkan hasrat beliau untuk kekal kembali ke negara kelahirannya (lihat ms 474E–H dan 475E); *Boldrini v Boldrini and Martini* [1932] P 9 dan *Copinger-Symes v Copinger-Symes & Anor* [1959] MLJ 196 diikut.

(5) Beban pembuktian bahawa seseorang telah meninggalkan domisilnya untuk domisil lain terletak atas pihak yang menegas. Kedua-dua niat dan tindakan meninggalkan hendaklah ditunjukkan sebagai meragukan dan mahkamah mestilah berpuas hati dengan keterangan. Dalam kes ini, kepulangan pempetisyen ke Singapura adalah disebabkan oleh perbuatan mendera penentang; ia bukan disebabkan oleh kerelaan hati dan tidak boleh ditafsirkan sebagai jelas. Justeru itu, penentang telah gagal membuktikan pertukaran domisil oleh pempetisyen (lihat ms 475C–D dan 476B–C); *Re Lloyd Evans, Decd* [1947] 1 Ch 695 dan *Re Estate of Fuld, Decd (No 3)* [1968] P 675 diikut.]

Notes

For cases on divorce, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1859–1985.

For a case on proof of domicile, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) para 1412.

Cases referred to

Anthony v Anthony (nee Pragasam) [1959] MLJ 42 (refd)
Bhagwan Singh, Decd, Re [1964] MLJ 360 (refd)
Boldrini v Boldrini and Martini [1932] P 9 (follid)
Copinger-Symes v Copinger-Symes & Anor [1959] MLJ 196 (follid)
Estate of Fuld, Decd (No 3), Re [1968] P 675; [1966] 2 WLR 717 (follid)
Jeyasakthy Kumaranayagam v Chandrakumaran [1996] 5 MLJ 612 (refd)
Lloyd Evans Decd, Re [1947] 1 Ch 695 (follid)
Majumder v A-G of Sarawak [1966] 1 MLJ 41 (follid)
Melvin Lee Campbell v Amy Anak Edward Sumek [1988] 2 MLJ 338 (refd)
Travers v Holley & Holley [1953] 2 All ER 794 (refd)
WT Berge v Salamah bte Salim [1979] 1 MLJ 18 (follid)
Winans v A-G [1904] AC 287 (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 3(2), 48(1)(c)

Wong Nai Chee (*SK Khoo & Tan Tian Tiok*) for the applicant.
Aslam bin Zainuddin (Legal Aid Bureau) for the respondent.

Suriyadi J: The petitioner wife was lawfully married to the respondent on 4 June 1987 at the Pejabat Pendaftaran Negara in Melaka and had stayed in Melaka until sometime in July 1996. She has not denied that she is a Singapore citizen and is presently residing in Singapore which is her original place of domicile. This marriage blessed her with three children, two girls and a boy, all born in Melaka. They went through turbulent times and thrice attempted to reconcile their differences before a marriage tribunal but without much success.

The affidavit and the petition of the petitioner, which at this juncture I must presume to be true, tell the story of a battered wife who had to go through hellish moments even from as early as 1991. Going to hospital to receive medical treatment was the norm due to the heavy hands of the husband. On 7 July 1995, she left for Singapore alone to seek employment so as to financially support not only herself but also her children. She regularly returned to see the children but even during this period the husband continued his assault on her. In June 1996, she was again assaulted physically when she rejected his sexual advances resulting in her having to be admitted in the psychiatric ward in the Hospital Besar Melaka. This incident was reported to the police.

Being unable to bear any further physical and verbal abuses of the respondent she left for Singapore in July 1996 but this time with her two daughters. There she sought out employment to support the unfortunate children but unfortunately for her son, she did not return to Malaysia to visit him. It is just as well that she did not return as otherwise the scars that she would have been left with might be physically and mentally intolerable. Despite the physical chasm between them, threats were still being directed to her via telephone calls culminating in a police report being lodged on 24 September 1996. With such a background, it is no surprise that on 18 March 1997 she filed this divorce petition. Before I could proceed with the hearing, learned counsel for the respondent, En Aslam bin Zainuddin from the Legal Aid Bureau, objected to the legality of the action by virtue of her not being able to fulfil the requirement of her place of domicile as provided by s 48(1)(c) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). Section 48 reads:

> (1) Nothing in this Act shall authorize the court to make any decree of divorce except —
> (a) ...
> (b) ...
> (c) where the domicile of the parties to the marriage at the time when the petition is presented is in Malaysia.

In a nutshell, one of the pre-conditions to be fulfilled before a court may grant a decree of divorce is that the domicile of the parties when the petition was presented was Malaysia. In the case of *WT Berge v Salamah bte Salim* [1979] 1 MLJ 18, s 80(1)(a) of the Singapore Women's Charter (Cap 47) — which is in pari materia with our above s 48 — was discussed by Choor Singh J. He opined that s 80(1)(a) was a mandatory requirement, a view which I totally agree with. Therefore, unless the contents of s 48(1)(c) are complied with then a High Court judge has no power to grant a decree of divorce for the applicant (see also *Anthony v Anthony (nee Pragasam)* [1959] MLJ 42; *Melvin Lee Campbell v Amy Anak Edward Sumek* [1988]

2 MLJ 338 and *Jeyasakthy Kumaranayagam v Chandrakumaran* [1996] 5 MLJ 612). There are too many authorities which have pronounced the impossibility of laying down an absolute definition of domicile, though in Malaysia illustrations have been resorted to so as to overcome this lacuna (see *Re Bhagwan Singh, Decd* [1964] MLJ 360). What is trite is that a place of domicile may be changed by several reasons, one of which is the metamorphosis to a domicile of choice by a person's own act from that of a domicile of origin by birth. This domicile of choice on the other hand may not be permanent as the person concerned may abandon it which results in the return to the domicile of origin until a fresh place of domicile is acquired. In other words, during the time when a person moves off to another place and takes up domicile there, the domicile of origin is held in suspension, with the latter to be reactivated only if the domicile of choice has been abandoned. It is no coincidence that it is not possible to have more than one domicile at one and the same time. To clarify the above matter, an enlightening and simple approach to the meaning of domicile was suggested by Scarman J in the case of *Re Estate of Fuld, Decd (No 3)* [1968] P 675 at p 682; [1966] 2 WLR 717 at p 723 where his Lordship said:

> Domicile is 'that legal relationship between a person ... and a territory subject to a distinctive legal system which invokes the system as [his] personal law ...': see *Henderson v Henderson* [1965] 2 WLR 218. It is a combination of residence and intention. It takes two forms — domicile of origin and domicile of choice. A classic description of the concept is to be found in Lord Westbury's speech in *Udny v Udny* (1869) LR 1 Sc & Div 441. Two features of his description are of particular importance in the present case. First, that the domicile of origin prevails in the absence of a domicile of choice, ie if a domicile of choice has never been acquired or, if once acquired, has been abandoned. Secondly, that a domicile of choice is acquired when a man fixes voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimited time.

As regards the place of domicile of the husband in the current case, no problem is posed for the court as not only is he presumed to be domiciled here by virtue of his Malaysian citizenship, but also due to the fact that he is currently living in Malaysia (see s 3(2) of the Act). Where the wife is concerned, the Act is none too helpful as there is no presumption provision that can save her position or intention despite her ten years' residence in this country. Therefore, direct and secondary evidence must be submitted by the applicant if the need arises. In the case of *Melvin Lee Campbell v Amy Anak Edward Sumek* [1988] 2 MLJ 338, Tan Chiaw Chong J said at p 339:

> There are two essential elements involved in determining the domicile of choice, and these are the factors of residence and the requisite intention to reside permanently for an indeterminate period in the country where it is alleged that the petitioner has adopted the domicile of choice. In this instance, it is to be noted that para 434 of 8 *Halsbury's Laws of England* (4th Ed) states as follows:
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> '434 Direct and secondary evidence of intention. Direct evidence of intention is often not available, but a person whose domicile

A is in question may himself give evidence of his intentions, present or past ... .'

It is not disputed that on the day the petition was presented she was already back in Singapore. Capitalizing on this fact, the respondent had no hesitation in suggesting that her return to Singapore by conduct was a B clear expression of her desire to abandon Malaysia as her place of domicile. How counsel arrived at that conclusion was difficult for me to accept as there were many other inferences that I could draw and arrive at by her choice of sanctuary. I could infer that she went to Singapore as that was the only place in the world where sanctuary was assured for her however temporary that may be. That was the place where she could get immediate C assistance from her friends, relatives or former business contacts, if any, with ease without having to go through some difficult processes or moments before her financial position was reestablished. With the history of suffering behind her, no reasonable person would have blamed her as regards her wisdom of choice. Moving further, I am unable to detect any legal doctrine, D either through case law or statutes, which presumes an abandonment of the place of domicile merely by being at her domicile of origin. A Malaysian husband has a deeming provision to invoke for assistance; a person is presumed to be domiciled in the country in which he resides (*Re Bhagwan Singh, Decd*); there is a presumption in law that an infant's place of domicile is the place of birth of its father and there was even once a E presumption that the domicile of a married woman was that of her husband while the marriage subsisted even though the parties were living apart before that British law progressed on (Divorce Ordinance 1952). But certainly I am unable to come across any presumption that just because a wife has returned to her place of original domicile nine months later F merely to seek out financial sustenance, she should be viewed with prejudice and distortion. The respondent also made out much of her nationality and of her not choosing a neutral country. I believe it needs more than that factor to convince me that she intended to abandon Malaysia. It is accepted law that the concept of nationality and the issue of domicile are two totally different concepts which deserve different and separate treatments. A G person may change his place of domicile but yet not be divested of his nationality (*Boldrini v Boldrini and Martini* [1932] P 9). It will be fallacious to think of the terms 'domicile' and 'residence' as being synonymous (see Lee Hun Hoe J at p 47 para h in *Majumder v A-G of Sarawak* [1966] 1 MLJ 41).

H One should not seize upon the facts which state in no uncertain terms that she is a citizen of Singapore and presently staying in a particular address in that country as she was merely telling the truth. This truth surely cannot be construed as a statement of declaration of her intention to abandon Malaysia. Even if she had indicated that she desired to give up Malaysia as her place of domicile that factor proves nothing as it merely I discloses the existence of animus without establishing the necessary factum (see Lord Handworth MR when referring to *Winans v A-G* [1904] AC 287 in *Boldrini v Boldrini and Martini* where he clearly said that a change of domicile was a serious matter ... it must be decided animo et facto). In

Copinger-Symes v Copinger-Symes & Anor [1959] MLJ 196, as regards proving the factum Good J said at p 198:

> The person claiming to have acquired a new domicile of choice must, for his claim to succeed, have 'burnt his boats'. He must have settled in the country of his choice, or at least have taken some step indicating an intention to take up permanent residence there, such as the purchase of a house for his own occupation, the transfer of his effects (as an ancient Roman would have removed his Lares and Penates) or the like.

I am unable to find any evidence of her having undertaken any of those strong measures indicating her supposed desire to permanently move back to her country of birth. The facts did show that the applicant is residing in Singapore as per the given address but to equate a change of address as abandoning the original place of domicile and simultaneously proving factum certainly is an unsound argument. At the risk of repeating the above facts, it must be borne in mind that she left Melaka from July 1996 until March 1997 as she had to seek out employment somewhere and at the same time escape the constant abuses of her husband. I did stress to the respondent's counsel that it was her privilege to choose wherever she wanted to go, to seek out the best haven to support her and her family, pending the settlement of the divorce. Even though her choice of place might invite a negative and distorted picture, to read into it a desire to abandon her domicile of choice would be stretching the facts too much. Proof of her change of domicile back to her original domicile surely requires stronger evidence than that. Permit me to quote Gill J in *Re Bhagwan Singh, Decd* [1964] MLJ 360 where at p 363 he said:

> The law on this point quite clearly is that a person who has formed the intention of leaving a country does not cease to have his home in that country until he acts according to the intention. In other words a domicile of choice continues until it is abandoned. It is divested only when the country of domicile has been actually abandoned with the intention of abandoning it forever.

As much as a temporary residence for the purpose of health or travel or business does not have the effect of changing the place of domicile, neither do I believe that by merely going to Singapore to work is proof of her desire to abandon Malaysia. Apart from this 'negative' fact which had been strenuously canvassed by the respondent, we have no other facts which may indicate her desire to return to Singapore permanently. On the other hand, we have these evidence which reflect otherwise, viz:

(1) she had willingly left Singapore to marry and settle down in Melaka;

(2) she had been blessed with three children in Melaka;

(3) she had resided here for a period of no less than ten years, a length of time which would have made her eligible to attain Malaysian citizenship;

(4) she had contributed substantially for the deposit of their matrimonial home resulting in that property being registered under both names;

(5) despite the bad deal of the marriage, she agreed to have the matter referred before a marriage tribunal at least three times;

(6) she was literally driven out of the matrimonial home due to the savage attacks of the husband; and

(7) despite knowing the probable consequences to her if she were to return to visit the children at the matrimonial home, she still took the risk. It was only after it became humanly unbearable that she left for Singapore which eventually resulted in the petition being filed.

Perusing the facts without the applicant even having to adduce evidence of her domicile status, I am convinced that when she was in Malaysia she already had exercised her choice by making Malaysia her place of domicile. Furthermore, I am not convinced that merely by her remaining a Singaporean and seeking employment in Singapore during that temporary period she had abandoned Malaysia as her place of domicile. In other words, the respondent had failed to impress her changed status on me. I placed the burden on the respondent as the onus of proving that a person has abandoned his domicile of choice for that of another has always rested on the asserter. In *Re Lloyd Evans, Decd* [1947] 1 Ch 695 under 'Held' is summarized:

> ... that the onus of proof that the testator had abandoned his domicile of choice lay upon those who asserted that this had occurred.

A change of domicile from the domicile of origin to a domicile of choice is imputed to a person on clear and unequivocal evidence and that burden is heavy (see *Travers v Holley & Holley* [1953] 2 All ER 794 and *Winans v A-G* [1904] AC 287). On the other hand, the burden on an asserter for the reverse is no less onerous. In the case of *Re Lloyd Evans, Decd*, Wynn Parry J said at p 707:

> The only real difference in law between the two cases of acquiring a domicile of choice and, placing the domicile of origin in abeyance, on the one hand, and abandoning a domicile of choice, on the other hand, is that less evidence is required to establish the act of abandoning the domicile of choice than is required to demonstrate the acquisition of a domicile of choice. But in either event both the intention and the act must be demonstrated to be unequivocal.

At p 708, his Lordship concluded that even if a testator was often in two minds, that factor was insufficient to establish an unequivocal intention to abandon his domicile of choice. In other words, the law requires more than a fickle and unpatriotic mind. In the case of *Re Estate of Fuld, Decd (No 3)* [1968] P 675 at p 685; [1966] 2 WLR 717 at p 726, Scarman J said:

> There remains the question of standard of proof. It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the party asserting the change. But it is not so clear what is the standard of proof: is it to be proved beyond reasonable doubt or upon a balance of probabilities, or does the standard vary according to whether one seeks to establish abandonment of a domicile of origin or merely a switch from one domicile of choice to another? Or is there some other standard?

Further at p 686 para c; at p 726, his Lordship said:

> The formula of proof beyond reasonable doubt is not frequently used in probate cases, and I do not propose to give it currency. It is enough that the

> authorities emphasize that the conscience of the court (to borrow a phrase from a different context, the judgment of Parke B in *Barry v Butlin* (1838) 2 Moo PCC 480) must be satisfied by the evidence. The weight to be attached to evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction, will vary according to the nature of the case.

For purposes of the current case, I am in grave doubt that the respondent is anywhere close to pricking my conscience let alone reach the stage of proving that the petitioner desired unequivocally to permanently leave Malaysia. As in the above case of *Re Lloyd Evans, Decd* where the deceased's act of leaving Belgium was dictated by force of circumstances as a consequence of the Nazi invasion, and not the result of a free choice and therefore equivocal, similarly in this case the applicant's return to Singapore was due to the abusive behaviour of the respondent. In simple terms her act was never pursuant to a free choice and therefore cannot be construed as unequivocal.

Stretching the argument further, if I may reiterate, the respondent had canvassed that by being away for nine months preceding the presentation of the petition that fact itself went against the requirement of s 48(1)(c) of the Act. I did toy with the thought of the situation if she had merely stayed over there for one week, maintained her Singapore citizenship and risked exposing her Singapore address? Would that have meant that she would not have been able to fulfil the prerequisites of the provision? Does it mean that by already staying in Singapore for that one week as per the hypothetical question the issue of factum would have been sufficiently proven against her?

Having considered the enormous wealth of authorities available, I must conclude that even though figures for purposes of stay are important they are not conclusive in proving the issue of domicile. An assertion of a change of domicile must be proved unequivocally, implying falling back on accepted norms of our evidential system by submitting admissible and credible evidence. For the current case, had the stay been very long coupled with other convincing evidence that she had burnt her boats I would not have dwelt too long on the objections of the respondent. What has to be proved is no mere inclination arising from a situation thrust upon her by an external or temporary pressure but an intention formed to reside in a certain territory indefinitely with that intention proved by sufficient evidence to establish the act of abandonment of the domicile of choice. Mere inferences and circumstantial evidence unsupported by other convincing evidence will not be sufficient (*Rayden on Divorce* (11th Ed) 47); *The Laws of England* (3rd Ed) Vol 7 p 17 para 32). Having considered the totality of the available evidence, I am satisfied that the respondent not only had not succeeded in proving the animus but also the factum. Based on this conclusion, the preliminary objection of the respondent is dismissed.

Preliminary objection dismissed.

Reported by Hanim Kamaruddin